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NOTES.

A CLUB "SYSTEM" TO EVADE LIQUOR LAWS IN A PROHIBITION DISTRICT.—State laws throughout the Union, provide either that the sale of intoxicating liquors be licensed by the State, or that the sale be altogether prohibited within the limits of the State. The State-wide prohibition Act of North Carolina, Chap. 71 Laws Ex. Sess. 1908, made it unlawful for any person or persons, firm or corporation to manufacture or in any manner make, sell, or otherwise dispose of, for gain, at any place within the State any spirituous, vinous, fermented or malted liquors or intoxicating bitters.

Under this act, there arose the case of St. v. Colonial Club, decided December 14, 1910, which sanctioned the ingenious "system" by which a sale was converted into a bailment and the club permitted to enjoy, within its precincts the use of intoxicating liquors even in this prohibition State.

The "system" was shown by a special verdict of the jury. The Colonial Club was a corporation organized under the laws of North

Carolina, and had its club rooms accommodating its one hundred and eighty members. The initiation fee was ten dollars and the quarterly dues six dollars. Beside the President, Board of Directors and Treasurer, there was a manager, who stayed at the club rooms most of the time. The club kept a book with order blanks for beer and stubs corresponding in number to the order blank; this book was kept by the club and when an order was made, a memorandum was kept on the corresponding stub. These books were paid for by the club and when an order was made the money was paid to the manager, who turned it over to the treasurer. The treasurer, having a banking account, banked the money and sent an order to a liquor house, outside the State, accompanied by the club's check in payment, which check corresponded to the amount received from the member. The liquor was then sent in the member's name, in care of the club, which made no charges and received no profits from the transaction. When the beer arrived, the member got a book of coupons, entitling him to a corresponding amount of beer from the general refrigerators, in which all the beer of the other members was mingled. A bottle of beer was served the member on surrender of a coupon.

Judge Manning *held* this transaction did not constitute a sale by the club to its members, because the defendant was merely the depository of the beer, ordered by the member and delivered in his name and for his use to the defendant, who was acting solely as the servant, agent or bailee without hire for such member. Hence the only sale, which occurred, took place outside the State and since the Legislature of North Carolina had no jurisdiction over this sale, the defendant could not be convicted.

If the decision is correct, this "system" is truly ingenious for in this same State, previous decisions had held that the same sort of transactions and use of intoxicants for the same purpose under other systems, offered by social clubs, was a "sale" and rendered in State v. Neis,[2] a club steward guilty of selling liquors without a license and in State v. Lockyear,[3] guilty of a breach of the local option laws.

To determine whether such a decision is correct, it is only necessary to decide whether the process or system by which members of a club obtain the title to a quantity of liquor to be disposed of by the individual as he may desire is a mere "distribution" among its members or is a "sale." The decisions on this point, whether the club adopts the ordinary rules or a special "system," are in conflict, but the weight of authority is undoubtedly in favor of the rule, that the distribution and consumption of liquors in a club by its members is a "sale."

This view was adopted in Manning v. Canon City,[4] 1909 which

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[1] 67 S. W. 771.
[2] 108 N. C. 787.
[3] 95 N. C. 633.

decided that the distribution of liquors kept by an incorporated club, to its members who pay therefor sums, which are used to replenish the supply of liquor is a sale within the meaning of the prohibition laws. In State v. Minnesota Club,[5] 1909, the distribution of intoxicating liquors by an incorporated club to its members, though without profit, constitutes a sale. The decisions of the Supreme Courts of Alabama,[6] Kansas,[7] Kentucky,[8] North Carolina,[9] Mississippi,[10] Michigan,[11] Georgia,[12] West Virginia,[13] Louisiana,[14] Maryland,[15] New Jersey[16] and Indiana,[17] all support this general doctrine.

On the other hand in Missouri,[18] Massachusetts,[19] New York[20] and Pennsylvania,[21] the Courts, because of the inaction of the legislature or of the district attorneys in not bringing former prosecutions, hold that the furnishing of liquors by an incorporated social club, organized in good faith, owning property in common, to which the furnishing of liquors is merely incidental to the purposes for which it was organized, does not constitute a sale, but the Federal Courts of Massachusetts in U. S. v. Nittig,[22] and of Pennsylvania in U. S. v. Alexis Club,[23] hold that such a transaction with club members does not constitute a "sale."

The general rule, beyond doubt is that the distribution of liquor by incorporated clubs to their members is a sale. What then is most generally accepted to be a sale, cannot be converted into a bailment by a mere trick, subterfuge, or "system" to evade the law.[24] But even admitting that a "system" is capable of turning a sale into a bailment, what the Colonial Club did, "system" or "no system," constituted a sale in every element. The members of this club paid in addition to dues, whatever sum each thought proper to furnish funds, with which to buy beer. Such fund becomes the property of the club as in the case of general deposits in a bank. The club then sends its own check for the amount of beer each member orders.

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[5] 45 Colo. 571.
[6] 106 Minn. 515.
[7] Martin v. State, 59 Ala. 34.
[8] State v. Haracek, 41 Kan. 87.
[9] Club v. Louisville, 92 Ky. 309.
[10] St. v. Neis, 108 N. C. 787 and St. v. Lockyear, 95 N. C. 633.
[11] Nogales Club v. St., 69 Miss. 218.
[12] People v. Soule, 74 Mich. 250.
[13] Mohrman v. St., 105 Ga. 709.
[14] St. v. Shumate, 44 W. Va. 490.
[15] St. v. Boston Club, 48 La. Ann. 485.
[16] Chesapeake Club v. St., 73 Md. 97.
[17] Newark v. Club, 53 N. J. L. 99.
[18] Marmount v. St., 48 Ind. 21.
[19] St. v. St. Louis Club, 125 Mo. 208.
[20] Com. v. Smith, 102 Mass. 144.
[21] St. v. Adelphi Club, 149 N. Y. 5.
[22] Klein v. Livingston, 177 Pa. 224.
[23] U. S. v. Wittig, 28 Fed. 224. ,
[24] U. S. v. Alexis Club, 98 Fed. 725.
[25] 23 Cyc. 183.

True the beer is sent in the name of each member in care of the club, but it is not placed on special deposit but mingled with all the liquors on general deposit. The beer thereupon becomes club property just as a general deposit in a bank becomes the property of the bank. Each member can check on the club, and receive not his own beer but the quantity of beer for which he pays with his coupons, just exactly as a depositor checks money out of a bank. Though the beer was ordered in the member's name, yet it was shipped in care of the club, received by it and mixed with the club's other goods, and thus become the club's property subject to draft. The use of the member's name was merely colorable, not changing the true nature of the transaction. Had the beer been stolen, it must be charged in a bill of indictment, as the property of the club, or had a member broken into the club at night and regaled himself with the beer, he could not plead the beer was his any more than the depositor who breaks into a bank, and takes cash from the vaults could set up the plea, that he was merely closing his account. If an execution was issued against the club it could be levied on the beer. Instead of members paying cash, and receiving liquor in exchange, they simply paid in advance, receiving therefor coupons, which they cashed for liquor. Such a transaction, whether for profit or for loss, is clearly a sale.

Chief Justice Clark, in a dissenting opinion, pointed out that such devices to evade the law have been numerous and many of them ingenious, but if the law exempts liquor selling by social clubs, however respectable, by devices or "systems" however ingenious, it should permit it to all clubs without devices or "systems."

The expression in the Declaration of Independence "equal rights to all and special privileges to none," is not a figure of rhetoric but the truest expression of American sentiment. "Privilege and privileged class are and ought to be intolerable and it comes irritatingly near to a privilege when social clubs offering advantages of comfort and luxury, that are only open to the more prosperous, escape the prohibition of a statute because refined reasoning declares that by carrying out a "system" a sale is not effected, but merely a distribution of the common stock of liquor among its members, while the robust sense of the community, not excluding the club members themselves, knows the transaction to be a "sale."

C. S. H.

EFFECT OF THE SALE OF GOOD WILL.—Good will was first recognized some one hundred years ago[1] as a species of intangible property and an asset of a going business. A problem soon arose in the effect of transfer of the good will of a business as a restriction upon the vendor. There slipped into the law an admission that the vendor of the good will could, if he choose, set himself up in a similar business to that which he had sold out, provided it be

[1] Cruttwell v. Lye (1810), 17 Vesey, Jr., 335.